

Paramount to issuing a restriction requirement, the Manual of Patent Examining Procedure ("MPEP") describes the criteria for restriction as follows:

- (A) The inventions must be independent or distinct as claimed; and
- (B) There must be a serious burden on the examiner if restriction is required.

MPEP § 803 (8th ed. 2001) (citations omitted). Furthermore, the MPEP requires that "Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the requirement in most cases." MPEP § 803 (8th ed. 2001). Indeed, an Examiner must clearly provide reasons and/or examples to support how the Groups define inventions that are independent or distinct, and further to show how there is a serious burden on the Examiner. The present Office Action provides no reasoning or examples of how the present claims define inventions that are independent or distinct, and no reasoning or examples to show how there is a serious burden on the Examiner. Rather, the Office Action merely concludes that the claims contain inventions that are distinct. Since the Office Action provides no reasoning or examples as to how the inventions are allegedly distinct, this restriction requirement is improper.

Even if the claims in an application contain inventions that are independent or distinct, a proper restriction also requires that there be a serious burden on the Examiner. See MPEP § 803(B) (8th ed. 2001). As the MPEP explains:

For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant. Insofar as the criteria for restriction practice relating to Markush-type claims is concerned, the criteria is set forth in MPEP § 803.02. Insofar as the criteria for restriction or election practice relating to claims to genus-species, see MPEP § 806.04(a) – § 806.04(i) and § 808.01(a).

MPEP § 803 (8th ed. 2001).

With regard to the issue of burden on an Examiner, the MPEP recites that "where, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions." MPEP § 808.02 (8th ed. 2001). The claims of the present application are directed to stable, aqueous fabric wrinkle control compositions (including articles comprising the compositions and methods of using the compositions) which comprise, *inter alia*, wrinkle control agents from a select group of materials. Applicants are not claiming the wrinkle control agents themselves. Therefore, the scope of

search required for such claims should not constitute a serious burden because a search directed at stable, aqueous fabric wrinkle control compositions (including articles comprising the compositions and methods of using the compositions) comprising certain wrinkle control agents should not constitute a serious burden.

In addition, by the Examiner's own admission, the allegedly distinct inventions in Claims 1-63 are all classified in class 524. The Examiner has not asserted that the field of search for each of the allegedly distinct inventions is different. Indeed, the Examiner has not set forth any discussion or reasoning as to the status in the art or field of search for each of the allegedly distinct inventions. *See* MPEP § 808.02(B)-(C) (8th ed. 2001). Since the classification and the field of search is the same for each of the allegedly distinct inventions, the present restriction requirement is clearly improper under MPEP § 808.02.

Based on the above remarks, reconsideration and withdrawal of the restriction requirement is respectfully requested. If, upon reconsideration, this restriction requirement is made final, Applicants respectfully request the next Office Action contain Form Paragraph 8.05 as suggested in MPEP § 821.01 (8th ed. 2001), to show that Applicants have traversed the requirement and have retained the right to petition from the requirement under 37 C.F.R. § 1.144.

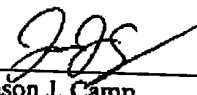
CONCLUSION

In view of the foregoing remarks, reconsideration of the application and allowance of all claims are respectfully requested.

Respectfully submitted,

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